

**DISCLAIMER**

*This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).*

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 11, 2002

IN THE MATTER OF

Receiving comments on a draft  
memorandum of agreement between the  
Department of Environmental Quality and  
the State Corporation Commission

CASE NO. PUE-2002-00315

ORDER INVITING COMMENTS

Chapter 483 of the Acts of Assembly (2002 Va. Acts 483) becomes effective on July 1, 2002 ("Chapter 483"). Chapter 483 requires, among other things, the Department of Environmental Quality ("Department") and the State Corporation Commission ("Commission") to enter into a memorandum of agreement regarding the coordination of reviews of environmental impact of electric generating plants and associated facilities. (See Senate Bill No. 554; Va. Code §§ 10.1-1186.2:1 B and 56-46.1 G.) The Department and the Commission are committed to developing the memorandum of agreement as promptly as practicable.

A draft memorandum of agreement is affixed to this Order as Attachment A. The Department and the Commission seek the benefit of comments from interested persons on this matter. Accordingly, the Department and the Commission hereby invite interested persons to submit comments on the draft memorandum of agreement, pursuant to the procedures set forth in this Order. The Department and the Commission will consider such comments and enter into a final memorandum of agreement, a copy of which will be sent to all persons or entities on the service list.

This is not a formal proceeding that is regulatory, adjudicatory, or other, as defined by 5 VAC 5-20-80, -90, or -100. There will be no final order issued in this case, nor will there be any final finding, decision settling the substantive law, order, or judgment within the meaning of § 12.1-39 of the Code of Virginia. No general order, rule, or regulation is being promulgated in this case. To facilitate the receipt of comments, the Clerk of the Commission shall serve a copy of this Order and Attachment A on all parties included on the service list in Case Nos. PUE-2001-00313 and PUE-2001-00665, which address amendments to the filing requirements for applications to construct and operate electric generating facilities. In addition, this Order and Attachment A shall be forwarded for publication in the Virginia Register of Regulations.

Accordingly, IT IS ORDERED THAT:

(1) Case No. PUE-2002-00315 is hereby established to permit interested persons to submit comments on a draft memorandum of agreement, affixed hereto as Attachment A, between the Department of Environmental Quality and the State Corporation Commission.

(2) The Clerk of the Commission shall include on the service list in this case all parties on the service list in Case Nos. PUE-2001-00313 and PUE-2001-00665, Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities.

(3) The Commission's Division of Information Resources shall forthwith cause this Order and Attachment A to be forwarded for publication in the Virginia Register of Regulations.

(4) Any interested person or entity desiring to be added to the service list in this matter shall direct such request in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Such requests shall refer to Case No. PUE-2002-00315.

(5) On or before July 10, 2002, interested persons or entities may submit initial comments on Attachment A to this Order. An original and fifteen (15) copies of such comments shall be filed with the Clerk of the Commission at the above address, and a copy of the comments also shall be sent to all parties on the service list in this case. Such comments shall refer to Case No. PUE-2002-00315.

(6) On or before July 24, 2002, interested persons or entities may file reply comments to the initial comments submitted above. An original and fifteen (15) copies of the reply comments shall be filed with the Clerk of the Commission at the above address, and a copy of the comments also shall be sent to all parties on the service list in this case. Such comments shall refer to Case No. PUE-2002-00315.

(7) This matter is now continued.

## MEMORANDUM OF AGREEMENT

The Department of Environmental Quality (“Department”) and the State Corporation Commission (“Commission”) enter into this memorandum of agreement (“Agreement”), pursuant to §§ 10.1-1186.2:1 B and 56-46.1 G of the Code of Virginia (“Code”), regarding coordination of reviews of the environmental impacts of proposed electric generating plants and associated facilities (“Impact Review”).

1. This agreement supersedes any prior written agreements between the Department and the Commission on the matters addressed herein.
2. The Department and the Commission will notify the other party in writing of the appropriate contact persons for the actions described in this Agreement.
3. The Commission’s Staff will notify the Department in writing within ten (10) business days of receiving an application for certification of an electric generating facility. No later than ten (10) business days after receipt of the environmental impact analysis information contained in the application, the Department will advise the Commission’s Staff in writing as to:
  - A. the completeness of the information received;
  - B. the estimated length of time required to conclude the Impact Review; and
  - C. whether the proposed facility is located in a region that was designated, as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act.

If the Department determines the environmental impact analysis information contained in an application is incomplete, within ten (10) business days of notifying the applicant the Department will notify the Commission’s Staff in writing and include a listing of the information needed to initiate the Impact Review. The Department and the Commission’s Staff may confer from time to time on these matters.

4. In accordance with §§ 56-46.1 A and 56-580 D of the Code, permits and approvals required for an electric generating plant and associated facilities that are issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact will be deemed to satisfy the requirements of §§ 56-46.1 A and 56-580 D of the Code with respect to all matters that (i) are governed by the permit or approval, or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission will impose no additional conditions with respect to such matters.

5. In accordance with §§ 10.1-1186.2:1, 56-46.1 A, and 56-580 D of the Code:
- A. No later than sixty (60) days after initiating the review of the environmental impact analysis information contained in the application, the Department will submit to the Commission's Staff in writing:
    - (i) a notification that the Impact Review has been completed; or
    - (ii) a notification that the Impact Review has been suspended due to matters discovered during the review. The notification will include a description of the information needed to resume the review.
  - B. Enclosed in the written notification described in 5.A.(i), above, for all Completed Impact Reviews the Department will submit a written report to the Commission which includes:
    - (i) a summary of the findings and any recommendations for the Commission's consideration which resulted from the review; and
    - (ii) a list of all environmental permits and approvals required for the proposed facility which were identified during the Impact Review, and the federal, state, or local governmental entity responsible for granting each permit and approval identified during the review.

For each environmental permit or approval identified during the Impact Review, the Department's report will include:

- (a) for each governmental entity that grants an environmental permit or approval, a listing of environmental issues identified during the review process, which (1) are not governed by the environmental permit or approval, or (2) are not within the authority of, and can not be considered by, the governmental entity in reviewing such permit or approval;
  - (b) for environmental permits and approvals needed for the proposed facility, a listing of (1) what matters are governed by the permit or approval, and (2) what matters were or will be considered by the governmental entity, within its authority, in reviewing the application for such permit or approval; and
  - (c) the current status of, and any changes in the estimated length of time to conclude, all environmental permit or approval processes.
6. In accordance with § 10.1-1186.2:1 C of the Code, the Department may request assistance from agencies of the Commonwealth as needed to complete reviews of the environmental impacts of proposed electric generating plants and associated facilities.

7. If requested by the Commission's Staff, one or more members of the Department's Staff will appear as a witness at the Commission's evidentiary hearing to testify regarding the activities of the Department with respect to the proposed electric generating plant and associated facilities. The Department also may coordinate the testimony of other governmental agencies on environmental issues.
8. If requested by the Commission's Staff, the Department will endeavor to provide, or seek to coordinate from other governmental entities issuing environmental permits or approvals, expert assistance to the Commission's Staff on issues regarding environmental impacts and mitigation of adverse environmental impacts.

---

Robert G. Burnley, Director  
Department of Environmental Quality

---

Date

---

Clinton Miller, Chairman  
State Corporation Commission

---

Date

---

Theodore V. Morrison, Jr., Commissioner  
State Corporation Commission

---

Date

---

Hullihen Williams Moore, Commissioner  
State Corporation Commission

---

Date